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In the Supreme Court of the United States

OCTOBER TERM, 1983

SHELL OIL COMPANY,
TELEDYNE MOVIBLE, INC.,

Petitioners,

V.

MARY OLSEN, CHRISTINE W. CARVIN,
GORDON DAVIS WALLACE, and
ARGONAUT INSURANCE COMPANY

Respondents.

DEATH AND INJURY CLAIMANTS' RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONSE TO PETITIONS FOR WRIT OF CERTIORARI

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RESPONSE BY DEATH AND INJURY CLAIMANTS TO PETITION FOR CERTIORARI

Mary Olsen, Christine Carvin and her children, and Gordon Davis Wallace, death or injury claimants, respond to the petitions for certiorari:

1. So far as these people are concerned there is nothing to the petitions.

They present nothing for review. They are exaggerations and distortions of factual minutiae in an attempt to create an appearance of writ-worthiness.

2. These people have nothing to do with the compensation law now. They have all been comped out; or the amortization of their judgment on a weekly basis makes further consideration of their comp interest moot.

3. None are drawing compensation except Christine Carvin, widow, and as soon as there is money in hand credit by amortization will exceed her life span.

4. After thirteen years the petitioners see the best way to drive the hardest bargain for settlement of the award of prejudgment interest is to take the case as far as they can regardless of merit. This is the second petition for certiorari in this case.

5. The decision is not in conflict with those of this Court; the opinion tends to support it.

6. The decision is not in conflict with the Shelf Act nor the intent of Congress. Congress intended a multiplicity, not a uniformity as intended by the Jones Act and

required by the maritime law. This is a shore-side case governed by shore-side law. The decision can be rationalized with past decisions of the Circuit Court; if not, conflict between panels of a circuit is no grounds for certiorari. *Davis v. The United States*, 417 U.S. 333, 340, (1974); *Wisniewski v. The United States*, 353, U.S. 901, 902, (1957).

7. The award of prejudgment interest was a highly personalized equity in a case of extreme circumstances; there is no major question of widespread public importance here. Prejudgment interest was bestowed as an equity and decided merely on the ground of equity. The assertions to the contrary in one or both of the petitions are an attempt to create an illusion of writ-worthiness. In every case following this, the district courts may under the rationale of the decision deny prejudgment interest on a factual basis that is not subject to appellate review. If the point had gone against the respondents below, it would have set nothing for reivew on appeal. To say that such prejudgment interest is now mandated in all future cases is distortion, willful or not.

8. So far as cert-worthiness is concerned this may be the first and last case where prejudgment interest is allowed. The equity here is patent to the extraordinary.

If the point must be considered at law, then:

9. The acid test:

If the general federal statute concerning post-judgment interest on all judgments were followed by an act of Congress pertaining only to the Shelf itself stating that in only tort cases only on the Shelf interest shall run from

date of judicial demand rather than from judicial entry of judgment, would there be a hopeless inconsistency or viceral repugnancy that would work a repeal of the general statute because of inconsistency? Obviously not; to state the question is to answer it.

10. Whether two statutes are inconsistent depends upon whether one would impliedly repeal the other on the ground of repugnancy. *State v. Gledhill*, 342 A2d 161, 169, (N.J. 1975).

11. It is well settled that repeals by implication are not to be favored; and where two statutes cover in whole or part the same matter, and are not absolutely irreconcilable, the duty of the court—no purpose to repeal being clearly expressed or indicated—is, if possible, to give effect to both. *Frost v. Wennie*, 15 S.Ct. 532, 39 L.Ed. 614 (1895), Mr. Justice Harlan speaking for a unanimous court.

12. Where both acts are affirmative and their substance are such that both may stand together, both are held to be in force.

Both the state and the federal interest statutes are affirmative, they bestow, they do not take away, and the substance of both may stand together. To reach petitioners' conclusion, the statute must read by implication that interest shall run from the date of judgment and *only* from the date of judgment. There is neither principle, policy nor history to support this.

13. Arguments for repeal by implication are especially disfavored where the previous statute is not stale or forgotten. This Court has held the prejudgment interest of the Louisiana statute shall be awarded in diversity cases;

its denial in FELA and Jones Act and maritime cases is only required because of the over-riding consideration of uniformity. Congress in working up the Shelf Act looked at the uniformity of the maritime law as a basis of surrogate law and cast it aside preferring multiplicity: the man on platform offshore Louisiana gets the same thing the man on shore Louisiana gets, the same injury, the same hurt, the same interest; and the same respectively for Texas, Mississippi, Alabama, Florida and the East Coast.

14. This Court has recognized this in rejecting maritime law as a basis for adjudication of these platform cases in allowing platform cases to be brought both in state and in federal court. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 101 S.Ct. 2870 (1981).

15. Where two acts cover the same subject matter both should be given effect if at all possible. *Leitz v. Fleming*, 264 F.2d 311, *cert.d.*, (1959)

16. Construction of a statute as having been repealed by implication—and the argument of petitioners is that the state statute would have the effect of repealing the federal statute on the question of interest—is one that should rarely be indulged and should, in any event, have only a limited application. *U.S. v. Holmes*, 188 F.2d 222 (6th Cir.,1951)

17. An act is not impliedly repealed because of conflict, inconsistency or repugnancy between it and a later act unless the conflict, inconsistency or repugnancy is plain, unavoidable and irreconcilable. 82 C.J.S. *Statutes* Sec. 291(b), p. 492.

18. Where both statutes are positive, where both can be satisfied by the same deed, there is not irreconcilable

conflict. The "deed" here, bestowal of interest from the date of judicial demand, satisfies both statutes.

19. Congress intended that applicable state law be used to fill any gap in whatever body of federal law might be pertinent to a particular case, provided such state law was not inconsistent with the federal scheme. *Rodrigue v. Aetna Casualty and Surety Co.*, 395 U.S. 352, 358 (1969). Since the federal statute is silent as to prejudgment interest, there is no conflict unless such silence generates an implied restriction. There is no basis for such implied restriction. There is neither history nor logic for reading the federal statute so that interest shall run *only* from the date of entry of judgment. *Illinois Central Railway v. Texas Eastern Transportation Can Corporation*, 551 F.2d 943, (5th Cir. 1977).

20. A natural equation, "A=B when C=D," is never read "*only* when C=D," unless laws of nature compel it. Nothing compels it here, man nor nature. The statutes are not at odds, but rather operate in a complimentary fashion.

21. The Fifth Circuit has recognized this. *Illinois Central Railway Company v. Texas Eastern Transmission Corporation*, 551 F.2d 943, (5th Cir., 1977). Accord. *Louisiana and Arkansas Railway Company v. Export Drum Company*, 359 F.2d 311, 316-17 (5th Cir. 1966); *Crawford v. Roadway Expressway, Inc.*, 485 F.Supp. 914, 925 (W.D., La. 1980); See also, *New Amsterdam Casualty Company v. Soileau*, 167 F.2d 767, 771-72 (5th Cir., 1948); *Glens Falls Insurance Company v. Danville Motors, Inc.*, 333 F.2d 187, 191 (6th Cir.,1964); *In re: Air Crash Disaster Near Chicago, Illinois*, 480 F.Supp. 1280, 1282 (N.Dist.Ill.,1979), *aff'd*, 64 F.2d 633, 7th Cir. 1981; *Oresman v. G. D. Searle & Co.*, 388 F.Supp. 1175, 1178, (Dist. Crt. R.I.,1975); *Ryan v. Ford*

Motor Company, 334 F.Supp. 674, (D.Mich.1971).

22. The Fifth Circuit implicitly acknowledged that its prior holdings lacked precedent on the point of prejudgment interest. *Ellis v. Chevron, U.S.A.*, 650 F.2d 94, 98 (5th Cir., 1981).

23. In the present case, petitioners asked the entire court of the Fifth Circuit to reverse the panel decision, which request was denied.

24. This point is further illustrated by admiralty cases which hold that 28 USCA 1961 is applicable to such cases. *Gele v. Wilson*, 616 F.2d 146, 148 (5th Cir. 1980).

25. The Fifth Circuit itself has held that "inconsistent" means contradictory in the sense of legislative provisions that can not co-exist and thus held that a statute which set out a minimum standard did not conflict with regulations going beyond the statutory minimum to establish stricter requirements. *E. B. Elliott Advertising Company v. Metropolitan Dade County*, 425 F.2d 1141, 1150 (5th Cir. 1927) *cert.d.*

26. Prejudgment interest under the Louisiana law is awarded as a form of damages; not as rent for the wrongful detention of money, the failure to pay a judgment. *Morgan & Bell 4* Mart. O.S. 615 (La.1817), *See Friede v. Myles Salt Co., Ltd.*, 177 So.105 (La.App.,1937) for history . See also, *Ladroeux v. Marsoudet*, 4 La. Ann. 334 (1848); prejudgment interst "*may be allowed by way of damages.*"

27. It is governed by a particular statute that concerns only tort judgments. La. R.A. 13:4203: "Legal interest shall attach from date of judicial demand, on all

judgments, sounding in damages, "ex delicto," which may be rendered by any of the courts."

28. Prejudgment interest under state law runs only from the date of judicial demand as a damage award, not from the date of casualty. The two statutes, federal and state, do not pertain to the same thing and do not overlap. For this reason, if no other reason, there can be no inconsistency.

29. Not "inconsistent" does not mean "identical." The meaning of the term "inconsistent" has been judicially settled long ago. Congress knew that when it passed this surrogate law; it is presumed to have been well aware. The meaning given the term "inconsistent" wrought by this Court over a century ago pertaining to statutes is conclusively applicable.

30. If the question can be looked at two ways, certainly it should be decided in favor of allowing both statutes to stand.

31. The Congressional policy favoring state law is strong here.

32. Since there is no need for uniformity and since the intent of Congress is done, not undone, by this award of prejudgment interest, both statutes should stand.

33. In the beginning neither under the Louisiana Civil Law nor the common law did tort judgments bear interest from any date, though post-judgment interest might be obtained for "the detention of the debt" by a suit on the judgment itself.

34. An interpretation of a Congressional act that has sevearal purposes is best satisfied by that which will accommodate all purposes; here, the allowance of prejudgment interest as damages and the allowance of post-judgment interest as a rent for the "detention of the debt."

35. To find inconsistency here it must be eagerly sought, contrary to the rules governing interpretation and construction of the phrase "not inconsistent" and the statutes employing it, to say nothing of the intent of Congress.

36. Congressional history shows that both sides of the aisles of Congress strongly desired that state law govern damage claims under the Shelf Act; thus the point here comes under the friend-and-foe rule of this Court, that where both friend and foe in Congress intend that, if a bill passes at all, it will carry a particular feature, then such history is conclusive that such feature is clearly implied if not expressed in the law. *First National Bank of Logan, Utah v. Walker Bank and Trust Company,* 81 S.Ct. 492, 385 U.S. 252, 17 L.Ed.2d 343, *reh.d.*

37. Incorporation of state law into the Shelf Act builds its own *Erie* doctrine into the federal statute making an award of prejudgment interest correct. *New Amsterdam Casualty Company v. Soileaux,* 167 F.2d 767, 771-72 (5th Cir. 1948)

38. Since neither civil nor common law provided for interest on tort judgments, both state and federal statutes awarding interest are positive, neither negative.

39. A final word about an argument that these respondents are not technically required to answer: that

these people will be double-dipping. They will get no only damages, but compensation too. Where this distortion came from or how it arose is unknown. It can not be answered because it cannot be understood. The factual answer is this: for thirteen years of litigation, the ever present intervenor has ridden the coat tails of these people, not putting out a dime to finance the litigation, not doing a minute's work, and now will get every dime of its money back from the people who are the death and injury claimants of this suit from the damages they are awarded.

The petitions should be denied.

WILLIAM P. RUTLEDGE
Attorney for Respondents,
Mary Olsen, Christine W.
Carvin and her children, and
Gordon Davis Wallace,
Death and Injury Claimants.

CERTIFICATION

I DO HEREBY CERTIFY that on the 9th day of December, 1983, that three copies of this response were mailed postage prepaid to counsel for Shell Oil Co., John Cherrier, 225 Baronne St., 28th Floor, New Orleans, Louisiana and counsel for Teledyne Movible, Inc., W. K. Christovich, 1900 American Bank Building, New Orleans, Louisiana.

WILLIAM P. RUTLEDGE